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Speech ... on the
amendment to the bill...

Washington

1841

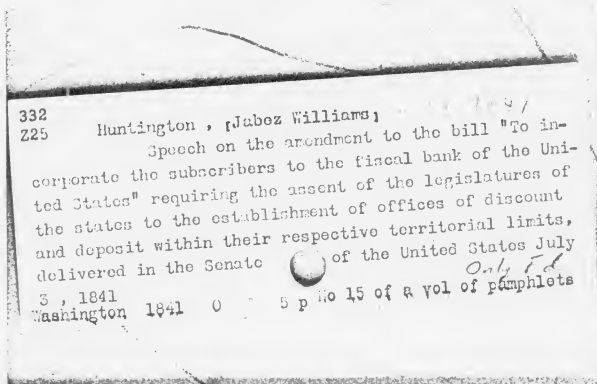
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No 15

SPEECH

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OF

J. W.
MR. HUNTINGTON, OF CONNECTICUT,

ON

THE AMENDMENT TO THE BILL

"TO INCORPORATE THE SUBSCRIBERS TO THE FISCAL
BANK OF THE UNITED STATES,"

REQUIRING THE ASSENT OF THE LEGISLATURES OF THE STATES TO THE
ESTABLISHMENT OF OFFICES OF DISCOUNT AND DEPOSIT
WITHIN THEIR RESPECTIVE TERRITORIAL LIMITS.

DELIVERED IN THE SENATE OF THE UNITED STATES, JULY 3, 1841.

WASHINGTON:

PRINTED AT THE MADISONIAN OFFICE.

1841.

SPEECH.

The Senate having resumed the consideration of the "Bill to incorporate the subscribers to the Fiscal Bank of the United States," and the following amendment proposed by Mr. RIVES, of Virginia, viz.

"That the said corporation shall establish a competent office of discount and deposit in any State, by the assent of the Legislature of such State, whenever the directors may think fit so to do; and when established, the office shall not be withdrawn without the assent of Congress; and the said corporation shall have power to commit the management of the said offices and the business thereof respectively, to such persons, and under such regulations, as they shall deem proper, not being contrary to law or constitution of the bank; or, instead of establishing such offices, it shall be lawful for the directors of the said corporation from time to time to employ any individual, agent, or any other bank or banks, to be approved by the Secretary of the Treasury, at any place or places that they may deem safe and proper, to manage and transact the business proposed as aforesaid, other than for the purposes of discount, and to perform the duties hereinafter required of said corporation, to be managed and transacted by such officers under such agreements and subject to such regulations as they shall deem just and proper."

And the substitute for the aforesaid amendment, proposed by Mr. BAYARD, of Delaware, viz :

"It shall be lawful for the said corporation to establish agencies to consist of three or more persons, or to employ any Bank or Banks at any place or places they may deem proper, to perform the duties hereinafter required of the said corporation as the fiscal agent of the Government, and to manage and transact the business of the said corporation other than the ordinary business of discounting promissory notes. That is to say, the said corporation shall have the right at such agencies, to receive deposits, to deal or trade in bills of exchange, gold or silver coin, or bullion, or goods or lands purchased on execution, or taken bona fide in payment of debts, or goods which shall be the proceeds of its lands and to circulate its notes. And, moreover, it shall be lawful for the said Board of Directors to convert such agencies into offices of discount and deposit unless the Legislature of any particular State in which such agency shall be established, shall, at its next session after such agency is established, express its dissent thereto."

Being before the Senate,

Mr. HUNTINGTON rose and addressed the Senate, in substance, as follows :

Mr. President: We have arrived, in the progress of this bill, at a point of great interest and importance. The deep anxiety which is felt in every part of this chamber—by the friends, as well as the opponents of a National Bank—as to the amendment now under consideration, is too obvious not to be perceived at a glance; and I will add, that the great solicitude which is manifested by the public in general, in reference to every important feature in the bill before the Senate, invests this amendment with no inconsiderable importance. Partaking of this common sensibility and anxiety, I have risen, under a deep sense of the responsibility imposed upon me, as an American Senator, to address the Senate. I am not willing to give a silent vote upon this occasion. I ought not to be, I cannot be silent. I desire to state to the Senate, to the beloved Commonwealth which sent me here, and to the American People, the reasons for the vote I intend to give upon this amendment. And this duty I shall endeavor to discharge in that spirit of courtesy and kindness, which is due to respected friends from whom I differ on the question before us, but with that firmness which is due to the subject under discussion.

The amendment proposes to lay the axe at the root of one of the most prominent features of the bill, as reported by the committee on the currency. As one of that committee, I approved of that feature. It was reported to the Senate with my concurrence and approbation. It asserts the right in Congress to authorize the establishment of offices of discount and deposit in the several States, without their consent. It provides for the exercise of that right, whenever it may be thought necessary or useful. It looks to the Bank to be created, as a *National Bank*, designed for *national* purposes, and to effect *national* objects. It views it, as a fiscal agent of the Govern-

ment, proper, fit, and necessary for the collection, safe-keeping, transfer and disbursement of the public revenue, and as calculated to regulate, most beneficially, the exchanges of the country; to establish, and permanently secure a sound currency, uniform, and equivalent every where to gold and silver, and by its benign operations, to promote the general welfare, revive the business and industry of the country, and advance its prosperity. It is designed to open anew the channels of business, which have been for some time almost entirely closed, and once more to set in motion the industry of the People, which has been so long paralyzed. To attain these ends, the institution is to be established for the whole country, by virtue of the authority of the country, and to subserve the purposes of the entire country. With this view, the bill, as reported, provides that the directors may establish competent offices of discount and deposit in any State, Territory, or District of the United States. In this respect, it follows the old beaten track of former times. It pursues the path which long experience has proved to be safe. It retains the provision in the charters of both the preceding Banks, which for nearly half a century was found to be beneficial. It repudiates untried experiments, and claims support, as well from the character and object of the institution, as from the salutary effects it has heretofore produced. It is a bill framed for no local purposes, but to promote the welfare of the whole People. Such is the nature and design of the power, and the anticipated result of the exercise of it, conferred by the section of the bill now under consideration. The amendment proposes to limit this power. It is framed with the view of abridging the exercise of it except upon condition. It takes from Congress the right to establish offices of discount, unconditionally, and requires the assent of the respective States to the establishment of them within their territorial limits. It looks away from the provision in the former charters; it pays no regard to the experience of forty years; it introduces a new feature into the act of incorporation. It proposes to insert, in the charter of a Bank created under an act of Congress, for the benefit of the whole nation, whose operations are to be co-extensive with the wants and the territory of the nation, which is designed to extend its benefits to every section of the country—in a word—of a National Bank, to be organized and put in operation for national purposes, and to effect national objects; it is proposed to insert in an act incorporating such a Bank, a clause, limiting the power to establish offices of discount in the several States, to such of the States as shall assent to the location of them within their limits. The Bank of the Nation is to be made to depend, for the exercise of some of its most important functions, upon the will of the States. The Bank of the United States, to enable it to perform a part of its most important duties, is to be made dependent upon the action of the State Governments. A Bank for the whole People is to be controlled by the will of a portion of that People.

I am opposed, under existing circumstances, and in view of existing facts, to this amendment. I shall vote against it. I do not say what I might do under other circumstances, should a state of things arise differing from that which now exists. I shall not say that even this amendment may receive my assent, if it be necessary and indispensable to secure to the country, even to a limited extent only, the benefits of a national institution. When the time arrives, (if it ever should,) for the consideration and disposition of such a question, I shall be ready to meet it. I will then act as my sense of duty shall require me to do. At present, no such question is proposed for our decision, and I shall not anticipate it. In the remarks I propose to make, I shall confine them to the original amendment of the Senator from Virginia; for the modification of it, proposed by the Senator from Delaware, has been just read, and I have not had an opportunity to examine it with attention; I believe, however, it does not vary essentially from the proposition of the Senator from Virginia, except that it specifies, with more particularity, the powers and duties of the agencies proposed to be created in the several States, and instead of requiring the assent of the States, to be given in express terms, to the location of branches, presumes that assent, unless they dissent, in the manner pointed out. In these particulars, the original amendment, and the proposition of the gentleman from Delaware differ, but they are both open to the objections which I propose to submit against their adoption.

There are but two grounds upon which this amendment can ask the favorable notice of the friends of a National Bank. Indeed, in the able and ingenious arguments which have been addressed to the Senate, too only have been suggested, and one of them, so far from having the support of, is utterly denounced by most of the Senators who are here assembled, and declared their intention to vote for the amendment. I feel confident, therefore, that if any other views favorable to this proposition could be presented,

they would not have escaped the ingenuity and learning of the Senators who have addressed us. I proceed, then, to consider the reasons which have been urged to sustain this amendment, and repeat that they are all embraced in the following, viz:

1. That Congress possesses no power to locate offices of discount and deposit in the respective States without their assent; and, therefore, that the provision which declares that the directors of the Bank may establish competent offices of discount and deposit in any State, Territory, or District, of the United States, and shall have power to commit the management of the said offices, and the business thereof, respectively, to such persons, and under such regulations as they may deem proper, not being contrary to law, or to the charter, is unconstitutional.

2. That if Congress do possess this power, and that it would be a constitutional act to exercise it, it is inexpedient, impolitic, and unnecessary to exercise it. So that the objection to this feature in the bill is the want of authority to adopt it, and the inexpediency of doing so, even if that authority existed.

I meet this objection, in the double aspect in which it has been presented, by expressing my entire conviction that the power which is denied does exist; and that, so far as existing facts appear, and present circumstances are developed, it is expedient that this power be asserted and exercised.

1. Has Congress been invested, by the Constitution, with power to establish a Bank of the United States, with branches, to be located, by their authority, in the several States, independent of, and without the assent of the States? The very statement of this question is calculated to startle some, at least, of those who are familiar with the legislative and judicial history of the United States, from nearly the commencement of the organization of this Government. Most of those who have been taught to consider the opinions of the wise and patriotic men who have advocated this power, as existing in the Constitution, as entitled to respect—of those who have paid similar respect to legislative acts and declarations often repeated and acquiesced in—of those who have cherished the doctrine that the adjudications of the highest judicial tribunal of the country on contested questions of constitutional law directly brought before them, and necessarily decided, as putting such questions, ever after, at rest—hear with surprise, at this period of our history, the renewal of a discussion on this now settled point of constitutional law. I do not intend to favor its renewal by any argument in support of the power claimed, derived from considerations which have led to its exercise for half a century. I should consider it a work of supererogation to recapitulate the arguments by which it was originally sustained, and by which it has since been enforced. I could add nothing to what has been better said by able men than myself. No reasoning of mine could elicit any thing new on a subject which has been exhaustively discussed by the genius and learning of the great men who have preceded us. Nor shall I refer to the recorded opinions of enlightened statesmen, profound jurists, and distinguished constitutional lawyers—to the acts of successive Presidents of the United States—successive acts of Congress—the general and very audible expression of popular sentiment. They form a part of the history of the country, and are familiar to us all. Waiving all these concurring circumstances which furnish overwhelming evidence in favor of the power of Congress to establish these offices of discount and deposit—waiving also every argument supporting this power, which may be derived from the objects designed to be attained by the formation and adoption of the Constitution—waiving, too, the additional support which the advocates of the power find in the words of that instrument, as well as in their obvious spirit, when applied to this subject—I call the attention of the Senate to a single consideration connected with the point I am now considering, which seems to me to be decisive, and which, I think, no ingenuity can remove, no reasoning answer, no power of intellect overthrow. And that is, the solemn, repeated, direct decisions of the Supreme Court affirming this power. Mr. President, I approach this part of the subject with feelings of the deepest sensibility. I have, from an early period of my life, been taught the propriety, as well as duty, of yielding obedience to the laws, and of the laws as expounded by that tribunal which has been created to explain and declare their meaning. I have been taught to reverence the opinions of those who have been constitutionally appointed to declare to me, and to all the people of these United States, the true meaning and interpretation of the Constitution and laws under which we live, and by which we are governed. The school in which I have been thus instructed, is that in which has been taught the safe, the just, the invaluable doctrine, that the rights and duties of the court of last resort, are to be considered as declaratory of the law, and the rights and duties growing out of it, until regularly set aside in a form recognized by the

Constitution. I have grown up under those instructions. Their value and importance have increased, in my estimation, during every year of my life, and what was the conviction of my judgment in my youth, has become confirmed in my riper years. And now, sir, with those early lessons of inestimable value imprinted on my mind, I come to the application of them to the case before us. And, in view of them, I say that if any matter of once disputed constitutional law, can be considered as settled—as no longer open—as closed to all doubt and dispute, it is that of the power of Congress to establish a Bank of the United States, with offices of discount and deposit in the several States, by force of their own authority. The Supreme Court of the United States have, more than once, had this matter presented to them for consideration and decision. The point has not been before them, incidentally only. The opinions which they have expressed, have not been extra-judicial. They have been required to consider the question as involved in the cases before them. It has been necessary to decide it, that justice between the parties litigant before them, might be faithfully and impartially administered. Nor has the question been merely, whether a Bank of the United States could be created by Congress; but the very question, whether branches could be established in the respective States, without the assent of the States, has been the basis of their adjudications. This point has been elaborately argued; time has been taken for deliberation; every view which could be presented, having a bearing upon it, has been considered. The giant intellect, the learning, the talents of the great, distinguished and patriotic men, who composed the Supreme Court, have been put in requisition; and that court have come to a result. They have declared what is the true interpretation of the Constitution as relates to the present subject. Under all the sanctions of a judicial oath, of the high responsibility of their station, of the great importance of the subject, they have pronounced their decisions. They have affirmed the existence of the once disputed power; and this, not by a divided opinion of the court—not by any qualified expressions indicating possible doubt and uncertainty on the point—but unanimously, explicitly, and firmly; and not once only, but repeatedly; forming a series of precedents and decisions, which cannot be shaken by any subsequent opposing decisions, without doing violence to the Constitution, and pulling down one of the main pillars on which the security of the rights of persons and property depends. No question of power under the Constitution, which has been doubted, and which has been the subject of judicial investigation, has been more fully, entirely, and irrevocably settled, by judicial authority, than the power to establish these offices of discount and deposit. In my opinion, it is not now an open question. If the decisions of a tribunal created, among other purposes, for the very purpose of settling these disputed questions—decisions often repeated, uniform, deliberate, called for and necessarily expressed—if such decisions are not to be considered as having the force of law, if they have not put an end to all doubt and dispute, no question of constitutional law can be considered as settled. We are still adrift upon the broad ocean of uncertainty, and every functionary under the Government is to be allowed to interpret the Constitution for himself, and to govern himself, in all his acts, by such interpretation, and to be protected in them. Mr. President, the decisions of the Supreme Court, on this point, are now to be considered as a part of the Constitution, as much so as if the doctrines contained in them, were expressed in words in the instrument. The interpretation of what is written, is given to us by authority which is paramount and binding. That authority to which we have agreed to yield our obedience, has declared that the Constitution gives the power to Congress to establish these offices of discount and deposit. It is now a part of that sacred instrument, and, for myself, I should feel under the same obligation to consider it as a portion of the Constitution, as if it was expressly asserted in so many words. A refusal to treat these interpretations as binding, it seems to me, would be at war with the whole genius and spirit of our institutions, and give unlicensed toleration to every exposition of the Constitution which might be honestly made, by every citizen of this widely extended Union. No question open to any doubt would ever be closed. Every person would be at liberty to interpret the Constitution for himself, and shield himself from the consequences which would or might follow from such interpretation, under the plea that he was conscientious in the views he entertained. If these opinions are to prevail, it would seem to be of little importance what are the adjudications of the Supreme Court, upon any matter of constitutional law.

But the most serious consequences which would result from permitting these adjudications to be disregarded, and allowing the matters decided to be still open to

discussion, have not been mentioned. I proceed to notice them. Under the decisions to which I have referred, (and they are to be found in the records of the court in this Capitol, and reported under our authority—I mean the cases in the Supreme Court growing out of the attempt by the Legislatures of Maryland and Ohio to impose a tax upon the Bank, through its branches), rights of property to a large amount have been declared and confirmed. Indeed, most, or certainly very many of the titles to property in this country, may be said to depend, directly or indirectly, upon the adjudications of courts, declaring the true and legal construction to be given to legislative acts, and to private contracts. Upon the implicit faith reposed in these decisions, and the moral certainty which is felt that they will not be disturbed—neither doubted nor overruled—investments of capital to a large amount have been made, and a conscious security is indulged in their stability and safety. Take away the shield which public virtue and the principles of immutable justice have thrown around the sanctity of these titles and investments, by the entire confidence placed in the stability of the adjudications on which they depend, and little is left of security for any rights of person or property. Such is the principle on which the vast amount of property acquired under the decisions of the Supreme Court, declaring the act incorporating the Bank of the United States to be a constitutional act, rests for its support. Transfers of stock were made, real and personal estate to an amount which can hardly be computed, was purchased upon the faith of these decisions. The titles to many houses, farms and plantations rest with confidence in the inviolability of judicial decisions. The income of many a widow and orphan, derived from this unshaken confidence, the wealth of many of our citizens, the revenues of many persons retired from active business, and some even of the property of the nation, depend upon the stability of the decisions of this high tribunal—the Supreme Court of the United States. And it is at this day, an open question, whether these decisions are to be maintained? Are these rights to be made to depend upon the opinions of judges who may hereafter occupy places in that court? Are the enrolled judgments and decrees which have their foundation in these decisions, to be opened, and the point again to be agitated, discussed and decided, whether the charter of the Bank of the United States, which lies at the foundation of them, was a charter granted by competent authority? Surely, this will not be seriously contended by any one; and yet it is difficult to perceive why these decisions should be conclusive upon all the rights of property, and to be respected and upheld, and yet the only principle which sustains them—that which affirms the constitutionality of the Bank and its branches—is to be regarded as open and undecided. Can it be an open question whether the power exerted in the creation of former Banks, was a constitutional power, when it is admitted that it is only in consequence of the existence and exercise of that power, that the rights acquired by the adjudications made in pursuance of it, can be maintained? Having, then, the repeated decisions of the highest judicial tribunal of the nation, one of whose appropriate functions it is, to put an end to all doubts upon the question of power, asserting and upholding, as we have heard, I think, to consider these decisions as declaratory of the true meaning of the Constitution—as incorporated in and made part of the Constitution itself—and in all cases to which they are properly applicable, to be the supreme law of the land.

I might stop here, in reference to this subject, and, I think, confidently affirm, that in view of these solemn adjudications, and these alone, the question of the constitutionality of a Bank with branches, is no longer open to debate. I propose, however, to make a few other suggestions connected with this point, and also in connection with the rest of the amendment now under the consideration of the Senate.

If the power to establish a branch in a State without its consent, is not given to Congress by the Constitution, how can it be conferred by the act in of the States separately? Does it make the location of a branch any more lawful because the State consents to its establishment? How can a State confer a power on Congress to do an act which the Constitution prohibits it from doing? The powers of Congress grow out of and depend upon the Constitution. They exist because they are granted by that instrument, and for that reason alone. Now, if a particular power is withheld, can it be conferred by the action of a single State—or by the concurrent action of all the States, except in the form provided for in the instrument, viz: by an amendment to it? It certainly would be a novel mode of obtaining power, by attempting to exercise it in the first instance, contrary to the Constitution, upon the contingency that one or more of the States assented to it! If Congress have the power to establish a Bank with branches, as being in its judgment fit and proper and necessary to the due and successful execution of its other powers, that power must exist independent of and without

reference to the authority of the States; and if it does not possess such power, if it is not conferred by the charter which creates, defines, and limits its authority, how can the States, except in one way—by an amendment to the Constitution—confer it? A striking illustration of the foregoing view of this subject would be found in the following cases. The Constitution prohibits Congress from passing any bill of attainder or ex post facto law; from laying any capitation or other direct tax, unless in proportion to the census; from laying an export duty; from giving preference by any regulation of commerce or revenue, to the ports of one State over those of another. Could the power to do any of these acts be conferred on Congress, by the mere assent of the States? And would laws to effect any of these objects be constitutional, if provision was made that the assent of the State should be first given? And if it were given, would the exercise of the power be then, and for that reason, lawful?

Suppose Congress were inhibited from making any thing but gold and silver coin a tender in payment of debts due to the United States, would the assent of a State to an act of Congress making bank notes a legal tender give legal efficacy to such an enactment? Would it be a constitutional law? Is that clause in the Constitution which provides that all laws of the United States which are made in pursuance of it, shall be the supreme law of the land, binding the judges, in every State, to be so construed as that such laws are either to depend, for their obligatory force, upon their concurrence with the constitution or laws of a State, or are to acquire their binding efficacy by reason of an express or implied assent, to be given to them, subsequently, by a State? And yet the essential feature of the present amendment is designed to obviate a constitutional difficulty growing out of the want of power to create a branch in a State, by requiring its assent, and thus conferring a power by such assent, which, without it, has no existence. It seems to me that if there be any such constitutional impediment, it is not removed by the action of the States in the way contemplated.

It is also well worthy of consideration, whether the constitutionality of creating a Bank at all, which is to operate out of the limits of the District of Columbia, as this is certainly intended to do, and as it must do, or else it has neither the form, nor the shape, nor the substance of a National Bank, does not necessarily imply a power to create branches in the several States, if Congress deem them necessary and proper to carry into effect powers expressly granted. Who is to judge of this propriety and necessity? Certainly not the States. If Congress may judge in these particulars, does not the admission, that it may create a Bank for national purposes, necessarily admit the power of establishing branches? Did the framers of the Constitution intend that Congress might make a Bank, as being necessary to the proper management of the revenues, by way of collection and disbursement, and yet not to be at liberty to place it where it supposed these ends could be best accomplished? Might it make a Bank, and yet have no power to locate it, or branches of it, except in this District, the Territories, the dock-yards, the forts, or the arsenals of the nation? The question may, then, with propriety, be repeated, if the power to incorporate a Bank, for the purposes mentioned, be admitted, does it not follow, as a necessary consequence, that the power to place it where it will produce the desired results, is also admitted? And how can one of these powers exist without the other? And is not the argument which asserts that the power to locate a branch in any State, derived from the fact, that the incorporation of a Bank of the United States is constitutional, a sound argument?

It may be added, further, on this point of constitutional power, that the residue of the amendment provides for acts to be done for, and through the instrumentality of, the Bank, which would establish the existence of the power which is denied—of establishing offices of discount and deposit. The Bank is authorized to employ any agent or agents, or Bank or Banks, to be approved by the Secretary of the Treasury, at any place or places the directors may deem safe and proper, to manage and transact the business proposed as aforesaid, *other than for the purposes of discount, &c. &c.* Now it is said that these agencies can perform all the appropriate functions of a Bank, except that of discounting promissory notes. They can deal or trade in bills of exchange, gold or silver coin, or bullion, or goods, or lands purchased on auction, or taken bona fide in payment of debts, or goods which shall be the proceeds of its lands—they can receive moneys on deposit—they can pay out the notes of the corporation. Whether, under this provision, they can discount bills of exchange, or buy (not discount) promissory notes, I will not inquire. Nor will I stop now to inquire whether it is probable, if the amendment should prevail, the stock would be subscribed for. It is sufficient, for my present purpose, to consider the power of these

agencies to be commensurate (as it is alleged it is) with all the wants of the Treasury, for fiscal purposes, and as sufficient to regulate the exchanges, secure a sound currency, and promote the general welfare of the country. If this be so, if these agencies will thus confer the benefits to be derived from a National Bank—if they are, in effect, offices of deposit and of business, uniting all the ordinary powers of a Bank, *except that of discounting*, and if it be lawful (constitutional) to create such agencies, why may there not be added the power also to discount, if Congress deem that a proper power to be conferred on the Bank? Can it be seriously contended that, under the name of an agency, Congress can constitutionally make a Bank, having all the essential powers of a Bank except one, and yet can not add that power also? They may make a constitutional Bank, it is said, for every purpose, except that of discounting; and as to that, they are practically prohibited. They can establish an agency in every State, without its assent, to deal in all things connected with banking purposes,—such as bullion, gold and silver, its own notes, deposits, bills of exchange, &c. &c., and yet cannot authorize the Bank to discount a note, unless the State consents to it. Is there any thing in the discounting of paper which renders the authority of Congress over it unconstitutional? Can they empower the Bank to deal in bills of exchange, and not in promissory notes? Where is this distinction to be found in the Constitution? Or how can it exist in reference to the question to which it is applied? If the power of Congress to establish agencies as being necessary and proper to the execution of its other powers, exists, the same power, for the same purposes, must extend to the establishment of offices of discount. It seems to me impossible to separate them, and that the admission that the one is conferred, is also an admission that the other is likewise conferred.

I do not deem it necessary to add any thing further on this question, of the power of Congress to create a Bank, with offices of discount and deposit, for I think it is implicitly admitted by that part of the amendment which relates to the creation of agencies, and by those who suppose that a Bank whose operations are not confined to the District of Columbia can be created, notwithstanding the proposition to require the assent of the Legislature of a State, is a practical denial of the power. I think, also, that the decisions of the Supreme Court have put the point at rest, and that it ought not to be disturbed. In addition to this, the main stress of the argument in favor of the amendment has been placed upon the ground of expediency, not of unconstitutionality; and I propose now to examine that branch of the argument, and to endeavor to show that it has no stronger foundation on which to rest, than that of the long-explored and buried doctrine of the unconstitutionality of a Bank of the United States.

2. Is it expedient for the Senate now, under existing circumstances in this stage of their proceedings, to insert a clause that the Legislature of a State shall assent to the establishment of an office of discount and deposit within its territorial limits? In my judgment, it is expedient now, not only to assert, but to exercise the power to establish such offices, without requiring the proposed assent. I propose to give the reasons for this opinion, after first considering the grounds of expediency which have been urged in favor of restricting the power to the assent of the States.

And it is supposed, that by yielding this disputed point, we shall sooner have a Bank incorporated. That it may be, that without the adoption of this amendment, the bill will not meet the approbation of the other branch of the Legislative department of the Government, or possibly may not find favor in another quarter, and that the country requires, demands, a Bank—that it has spoken on this subject in unequivocal language, which cannot be mistaken—that it expects one speedily—and that no unessential provision should be insisted on which may impede or prevent its immediate creation.

And who, Mr. President, speaks with authority on this subject? Or who, if he could, ought to speak with such authority? Who knows what are the views and opinions of the other branch of Congress, or of the Executive? How do we know what will, and what will not, be favorably received elsewhere? Who is empowered to rise in his place in this chamber, and urge the adoption of this amendment, on the ground that if we do not accept of this, we shall certainly lose all? No such authority is claimed, none such has been stated. On the contrary, it has been expressly disclaimed.

But, sir, what have we to do with the opinions of others—of those who compose a branch of the Legislative department, sitting at the other end of this building, or of the high functionary who may be required to examine and act upon this great mea-

su e? Who are we, and what are our duties? We are the American Senate—an independent branch of the Congress of the United States. We are to be consulted together, and to act for the honor and interests of our common country, to maintain her rights, to promote her welfare. In the measures we may be called to consider, we are to bring to our aid our patriotism, our knowledge, our experience. We are to obtain all such information as may lead to correct and useful results.—We are to perform our constitutional duties, under all the responsibilities which rest upon us, and under a deep sense of the importance of those duties. We are to ask no counsel of our fears. In forming our opinions, or casting our votes, we are not to inquire in advance what are the views of others who may be called to express their opinions. We have nothing to do with the remote consequences of our acts, when satisfied that duty requires their performance. We are to ascertain what duty demands, and fearlessly and resolutely to discharge it. Having once entered upon that path, we should walk in it, without turning either to the right hand or to the left, and then, come what may, we need not fear the upbraidings of conscience, nor the denunciations of the virtuous. To others must be left their share of responsibility.—When they are called to act, they must, and doubtless will, act under the same weight of the importance of their duties, as rests upon us. We are not to go either to a legislative hall, or an Executive mansion, to learn what will be acceptable there. The time has not yet come when the Senate of the United States will be called upon to bow to any such implied dictation. No, sir, no. We have not been asked, and shall not be, to conform our opinions to the views of those who may hereafter be called to act on the subject, under equal responsibilities with ourselves. We do not even know what their opinions are. I shall vote uninfluenced by any supposed embarrassments which may possibly arise elsewhere, and the spirit of independence which has characterized the ancient, honorable, and patriotic Commonwealth which has given me this seat of honor and trust, shall neither be lost nor impaired in my person. But I leave this unpleasant topic. It has no relevancy to the point I am considering. It has not been alluded to by any one with any unkind feeling, or from any but the purest motives. Let us forget that it has been mentioned.

I proceed now to consider the only ground of expediency on which the adoption of this amendment has been placed—and it has been presented with all the force of argument, and power of eloquence, which belong to the distinguished gentlemen who have urged it. We have been reminded that all things which are lawful are not convenient; that mere assertions of power are oftentimes dangerous; and that concessions and compromises, without sacrifices of principle, often produce the most happy results; that it is not to be concealed that there are many honest and patriotic citizens who doubt certainly, if they do not deny, the constitutional power of Congress to locate offices of discount in the States without their assent; that the adoption of the amendment, which denies no power heretofore claimed, merely withholds the exercise of it; and that, in this way, all constitutional scruples will be removed, all preconceived opinions remain undisturbed, all sectional jealousies allayed, all State pride untouched, all apprehensions of danger removed. It would obviate the scruples of eminent friends, and give to the country a Bank, which would disarm much of the hostility now prevailing against such an institution, and enable it to lead a more quiet, peaceful life than if exposed to the effects resulting from the jealousies and scruples of State sovereignties. I intend to meet this argument for conciliation and compromise in the same frank and generous spirit in which it has been offered to us. It is a fair argument, which deserves and shall receive all the consideration to which its merits entitle it. And I take the occasion to say, it is the only argument which has been urged by most of those who have spoken in favor of the amendment—the ground of the unconstitutionality of the act not having been urged, but repudiated by most of them.

My first answer to this proposition of compromise is, that it is impossible for me to perceive how it can satisfy the scruples of those who deny the power of Congress to create offices of discount and deposit against the wishes of the States. It is true, by the amendment, their assent is required to the establishment of such offices, but it is not required to the creation of agencies in the respective States, clothed with every banking power, except that of discounting notes. I have adverted to this topic in a previous part of the discussion, for a different purpose. I revert to it again, as pertinent to the present inquiry, for it is very difficult for me to see how the object of the amendment can be attained—that of removing out of the way constitutional scruples—while the other parts of the amendment are retained. Is it so that the power to

discount notes in a State cannot be conferred, by an act of Congress, in the form of a Bank charter, and yet a power be granted to exercise every other banking privilege? Can those who suppose an office of discount and deposit cannot be established, even although deemed necessary by Congress to aid the legitimate operations of the Treasury, show that an office of deposit—to receive and pay out moneys—deal in gold and silver, and in exchanges, can be constitutionally created to act within the limits and operate upon the interests of the States? How can these two powers, when considered proper and necessary by Congress to be exercised, be distinguished, and the one be deemed lawful, and the other unconstitutional? What evidence have we that the section, as modified by this amendment, will be acceptable to all who are jealous of State rights, fearful of dangers from locating branches in the States, and desirous of placing them under State authority? Until we have such evidence, why should we be asked to give up our convictions of right and expediency as a peace-offering, as due to the spirit of conciliation and compromise? Why should we, in advance, yield a point which we should consider important, united, and which, that by yielding it, we shall put an end to all jealousies, heart-burnings, and forebodings of evil? If these agencies proposed to be established, are not irrespective of, and irresponsible to, State authority, they can be taxed, and otherwise dealt with, as the lawful power of the State may direct; and, then, no one would subscribe to the stock—probably not a share of it would be taken. But, if they are uncontrollable by State laws—as they certainly are—if, in consequence of their creation by an act of Congress, they depend upon that act for their existence and power, why, then, they are a Bank of discount and deposit in another form; and while the assent of the States is required to an office of discount, it is not asked nor required for the location of agencies which are to produce nearly the same results. I leave it to those who think, that in reference to the question of constitutional power, there is a substantial difference between the two forms of effecting the same object, to point it out; and I especially commend to those who suppose the one mode to be constitutional, and the other not, the inquiry whether a majority of those who are jealous of the exercise of Federal power, will consider this amendment as possessing either the form, or the substance of a compromise act?

But another answer may be given to the argument of expediency which has been urged on this occasion. And that is, that in my opinion, the number of those who deny the power of Congress to establish the offices of discount, is very limited, and, therefore, there are but few who will ask for the adoption of this proposition of compromise. I necessarily speak from my own view of the extent of the opposition to the existence of this power; but I believe since the repeated acts of legislation—the decided opinions of many of the distinguished statesmen of the country, some of whom are dead, and some still living—the repeated recognitions by Congress, and the solemn decisions of the Supreme Court, public opinion has very much settled down, in the conviction that the power is no longer to be denied. Whatever opinions may have been entertained on the abstract question, the general sense of the nation has been expressed in favor of not disturbing it, and against treating it as a matter doubtful, and open to dispute. I am aware that this is not the universal sentiment. I know that many excellent citizens, many distinguished public men, many of the most honorable and patriotic of our people, consider this matter open, unsettled, and yet retain all their former opinions. Still, however, I believe the number not to be large, and with the exception of such, whose feelings and opinions are always to be regarded with kindness and respect, and some others who always endeavor to make political capital out of almost every subject of public concern, that the great body of the American people have come to the conclusion, that the power claimed and asserted in the bill as reported by the committee, exists and may be exercised. Opposed as they may have been originally to its assertion, they have yielded to the combined influence of the opinions, legislation, and judicial decisions to which I have referred. Maryland and Ohio resisted it in every constitutional form. These States denied the power—asserted their own authority—and were heard, by the common arbiter provided by the Constitution, on the question of right. The decision was against them, and they submitted to it, and since that period, it has been acquiesced in by the Legislatures and people of the States generally as a point which was settled by that tribunal while all the States and the people had agreed to settle such matters of doubt and dispute. If not satisfied with the reasons for the decision, nor with the correctness of the decision itself, they have yielded to it, as being of paramount authority, which other judges sitting in the places of those who pro-

ronced it could not properly disregard nor overrule. If such be public sentiment, very little, if any, fear exists that there will be much danger from State jealousy, or State pride, or State interests, if the amendment should be rejected. There is but little of this feeling to be allayed. And surely, in such a case, there would seem to be no necessity for indulging what has been denominated the spirit of conciliation and compromise, at the expense of our decided convictions of what will be best for the interests of the country, viz: giving power to the Bank to establish offices of discount and deposit in the way experience has proved to be highly salutary and beneficial.

But there is another view to be taken of this proposition of compromise, quite decisive, I think, under existing circumstances, against the adoption of it. The very opposite effect will be produced, from what is desired, or what is supposed will follow by those who advocate the amendment. At present, there is much quietness in the public mind upon this question of power. As I have said before, the People generally have not wished to disturb a matter which has so long been at rest. Although many may deprecate the creation of a Bank of the United States, the constitutional right to establish it is much less denied than formerly. I sincerely believe, that among all the disputed points of constitutional law which have been raised and decided in this country within the last fifty years, there is no one which, by the People at large, is considered to be more definitively settled than the constitutional authority to establish a Bank of the United States. And now, what is proposed by this amendment? Why, to open anew this dispute, which has been almost entirely closed; to throw a fire-brand among the People of the States; to revive again the discussions and disputes of former times, and to awaken the animosities and embitter the feelings which have become quiet, and are covered up as it were, and silent in the grave. Is it not quite obvious that such will be the result of adopting this amendment? Will it not revive the very jealousies it is proposed to allay? Human nature is the same in all ages and all countries, and once afforded the opportunity to indulge old opinions and act upon them; to permit former opinions to guide and regulate the conduct; to allow matters long considered as settled, to be treated as new questions, and will not the result be just what is dreaded by the advocates of the amendment—the free and full indulgence of all those jealousies and feelings which ought rather to be allayed than excited? Will not the question of power again be discussed in the legislative halls of the States? Will it not be regarded as a legitimate and fair topic of argument? And will not matters of expediency be merged in questions of power? Will there not be danger that the inquiry, whether the establishment of a branch will be beneficial or otherwise, to the States, will be lost sight of in the more absorbing topic of the right to establish a Bank at all? And is there no reason to apprehend that, when a charter is presented to a State to obtain its assent to the location of an office within its limits, one of the principal topics of debate will be, whether any power exists to give such assent as will justify that location? I put this inquiry to those who think this amendment is calculated to produce harmony and quiet among the States. Independent, however, of all this, what will be the course adopted, in some of the States, if their assent be made necessary to the location of the branches? I will state what will be the course, in several particulars. It is well known that many of the local institutions consider, or affect to consider, the establishment of a branch of a Bank of the United States as prejudicial to their interests—its interfering with their legitimate business—as reducing their profits—as exercising an unnecessary control over their issues, and limiting the amount of their loans. With such views, these institutions may array themselves in hostility to the establishment of a branch. They may enter the political arena, and candidates for the Legislature may be selected and voted for in reference to their opinions on this subject. Thus the question of Bank or no Bank may become a political question, and parties and State institutions may be arrayed at the polls. State pride be appealed to—State jealousies be fostered, and a mere question of expediency may be turned into a question of party politics, or be made to depend, in a measure, upon selfish considerations, irrespective of the public good. But to this array of opposition from interested individuals and corporations, from political demagogues, and selfish politicians, and from party predilections for party purposes, are to be added, other matters which will not fail to create divisions and dissensions, and ultimately perhaps deprive the nation, and the people of the States, of the benefit of an office of discount and deposit. In many of the States a great desire will probably be manifested to impose conditions to the location of a branch; and I have no doubt great exertions will be made to impose them, and it would not certainly be matter of surprise if some of them should prevail. There may

be almost as many different projects, suggested in the form of conditions, as there are members of the legislative body; but among those which will probably be the most prominent, and the most favorably received, are the following:

First. That the capital employed at the branch be taxed to the same extent as the banking institutions of the State. This will be a popular condition, and will be urged as being perfectly just. It will be said that there is no sufficient reason why the stockholders of a State Bank should be required to deduct from their dividends a given sum, by way of tax, upon the franchise of banking, and the stockholders of the Bank of the United States be exempted from it; that it is just both should pay for the franchise, in the same way, and to the same extent. Without sufficiently attending to the well-defined distinction, that the power to tax the Bank, as a corporation, may be abused, so as to destroy the franchise, and thus defeat all the national purposes designed by the establishment of a branch in a particular State, the subject is viewed only in reference to what is supposed to be an improper distinction, between a State and a national institution, and the right and the equity of imposing the tax will be urged and insisted on—and would it be too much to say that, in many States, the argument would prevail? And if it should, or it is believed by capitalists that it would be successful, is it probable they would subscribe to the stock, and that the subscriptions would be filled up?

Second. Another portion of the members of a Legislature might deem it proper to say, previous to granting the assent asked, that as the institution solicited the privilege of doing business within the limits of the State, it would be not only prudent, but right for the State to have some agency in its management, and therefore ought to require, as a condition, that the State may select one person at least to be a director in the branch. This would be urged, on the ground that there ought to be nothing concealed from the knowledge of a confidential officer of the State, in the transactions of the institution; that it is the duty of the State to protect the rights of its own citizens, and as the business operations of the Bank would more or less affect individuals, it would be very proper that protection should be afforded them, in the form proposed. It would also be said, that so far from causing any injury to the Bank, it would tend to allay any fears which might exist from the influence of a foreign institution, and consequently that the Bank should rather solicit than object to such a supervision. Such a proposition would probably find some advocates, and might combine other interests in its support.

Third. Another class of legislators would urge the propriety and necessity of superadding to the consent of the State, a provision retaining the right to withdraw it, after the lapse of a specified period of time. This would be presented to the consideration of members, as a matter of much consequence. It would be said, that the state of things might hereafter be such in the Commonwealth, as to render the continuance of a branch injurious to the interests and obnoxious to the feelings of the People; that it might come in conflict with their State institutions; and produce broils and jealousies, and mutual criminations and recriminations; that it might be so managed as to give just cause of offence; that its operations might come in collision with the interests of the State, and that a due regard to the sovereignty, the rights, and the authority of the State, would require that a power should be reserved to it, to annul the act giving the assent, and unless that was acquiesced in, the assent ought, in the first instance, to be withheld. This proposition would receive some support, and enlist many advocates.

Fourth. There would probably be, in some of the States, a bitter controversy as to the place in the State where the branch should be located. It is not to be disguised that there are rival cities in the same State, each of which would urge its claims to be selected as the place for locating the office. And there are few matters which engender more hard feelings, and occasion more serious controversy, than those which relate to the selection of a place (among many which are named for it) for the establishment of an important public institution. How often has it been seen, in the efforts made to obtain the establishment of a State Bank, or a branch of it, a State hospital, an asylum for the deaf and dumb, or the blind, and even of a penitentiary. Something of the same spirit would be manifested in relation to the location of an office of discount and deposit. Each city would have its friends and supporters; each would consider its claims as the most meritorious, and while contending for the prize, the interests of the State and nation might be overlooked in the fierce contests which would exist, and the exasperation might arise to such a degree, as that a majority could not be found in favor of any place; and should a majority

agree, the place might be quite unsuitable, and, in the opinion of the Bank, one which they could not approve. These are a few of the conditions which might be imposed upon the Bank, as precedent to the exercise of the right to locate a branch. Many more might be supposed, and doubtless a great many more would be offered. Enough have been mentioned to show how unwise it would be to throw this apple of discord into legislative halls, and great and well founded would be the apprehensions that the assent would be refused, except upon terms deemed to be wholly inadmissible. Is there no fear that even the doubts which would be thrown over the subject, might deter capitalists from becoming subscribers to the institution, and thus every national benefit be lost to the country? I have made these suggestions with a view of calling the attention of the Senate to the great disadvantages, not to say, serious evils which might follow from requiring the assent of the States to the location of the branches, and to urge the expediency of refraining from giving this power to the States, unless deemed indispensable to attain great and important ends of usefulness to the country. I know it has been said that Legislatures will be so convinced of the utility of the branches in promoting the business of their citizens, and in the facilities which they will afford, that they will unconditionally assent to the establishment of the branches. It may possibly be so, but legislators are but men, and among them there are certainly sometimes to be found politicians; and when there shall be united the opposition of State institutions,—the efforts of party leaders, the popular topic of equal taxation, the benefit of State directors, the importance of a reserved power to withdraw an assent once given, the conflicting claims of rival cities, for the location of the branch—when all these matters, and others which might, but need not be mentioned, are duly considered, can it be wise to hazard the existence, or the benefits of a great national institution, necessary and indispensable to secure the prosperity of the country, and the operations of the Treasury, upon the contingency of the voluntary and unconditional consent of the States, to the establishment of offices within their limits, so that these important objects may thereby be attained? I leave this question for those who advocate this amendment, and for the Senate to answer.

If I do not mistake, it is quite evident that the grounds of expediency on which this amendment has been placed, will not sustain it. There does not, as it seems to me, exist at present, any necessity for adopting it, nor any benefit which will follow from it. On the contrary, I can foresee much mischief as the result, without any corresponding good. I have incidentally referred to these evils, while examining the views of expediency presented by my friends who have advocated the proposition. I will add a few suggestions more, and then relieve the Senate from any further consumption of their time.

This amendment, although it does not expressly, and in terms, deny the power of Congress to establish these offices, yet it practically denies it. The strong implication of the want of this power, derived from the insertion of the words, "*with the assent of the Legislatures of the States*," is itself highly objectionable. I am aware that my friends suppose, and I know that they are sincere in the belief and conviction, that these words contain no denial of the power, but are merely indicative of a disposition not now to exercise it. But at this period of our history, and in view of all which has been said and done, conferring the authority claimed, the very determination not to use it, carries with it strong doubts of its existence. But waiving this view of the subject, I will call their attention to another aspect in which it should be considered. I have said the amendment practically denies the power. And is it not so? I make no pretensions to the gift of prophecy—I lay no claim to any superior foresight. But I will venture to predict, that, if this amendment be adopted, no charter of a Bank of the United States, in all time to come, will be granted, without the insertion of a similar provision. Once ask the States for their assent, as preliminary to the location of the branches, and you will be required, ever after, to ask it. It is in this respect like the extension of the right of suffrage. When once allowed, it can never be recalled. This results from the combination of causes to which I have heretofore alluded, and which, while they may operate either to prevent branches from being established or to encumber them with conditions, will forever be united to demand and insist that, in all future charters, the assent of the States shall be required.

I will not occupy the time of the Senate in referring again to these powerful and all-controlling causes, nor to the manner in which they will be brought to bear upon the question of requiring assent in charters which may be hereafter granted, nor to the overwhelming influence which they will exert upon this question. Having once given up the old, well established and sound doctrine that Congress

may incorporate a Bank with branches irrespective of the States, and having yielded to the States the right to give or withhold their co-operation in a point essential, that right will never be given up. Senators will be instructed, and representatives requested not to vote for any charter which does not contain such a provision affirming such a right; and thus the assent will, in all future time, be made an indispensable prerequisite to the establishment of an office of discount and deposit; and so, the entire given up and abandoned. I cannot, unless a greater necessity exists than I can at present perceive, record my name in favor of a proposition which may produce such results. I prefer to walk in the plain path marked out by my predecessors, which the experience of fifty years has proved safe, and to exercise a power so beneficial, so firmly established, instead of subjecting it to the caprices, the jealousies, the conflicting interests, which might possibly be brought to bear against it.

I might, with propriety, call the attention of the Senate to the question, whether (in the event of the refusal of some of the States, in which the location of branches is most important, to give the required assent) the establishment of the contemplated agencies will, in the view of capitalists, be sufficient to induce them to subscribe for stock in the Bank. Much might be said, and perhaps with profit, on this point. But I forbear entering upon it now. It may be, that a suitable opportunity will hereafter offer.

And now, Mr. President, in view of all the matters to which I have adverted, I have come to the conclusion that I cannot, under existing circumstances, vote for this amendment. I can perceive no necessity for its adoption. I can see great evils which might arise were it to be made a part of this charter. I regret to differ from friends for whose opinions I entertain great respect, and in whose patriotism I repose the most entire confidence. But I am constrained to say, in answer to the appeal which has been made to me, by my friend from Massachusetts, (Mr. CHOATE,) that I cannot now go with him upon this untried and dangerous experiment. Entertaining the views which I do in regard to this subject, I should consider that I was recreant to the trust reposed in me by a generous and confiding State, if I were now to give up, either expressly or by implication, the power which I cannot but think this amendment practically denies—and coming, as I do, from the land of the CHARTER OAK, (alluded to by the Senator from Massachusetts,) which still lives, fresh and green—a memorial of the spirit of freedom and resistance to tyranny and oppression which has ever characterized her sons in every period of her history—and representing a State which has sent to this body an ELLSWORTH and a SUMNER, names honored and revered, and which has impressed upon all her citizens the great duty of sustaining the laws as expounded by the highest judicial authority of the land, I feel that I am actuated by the same spirit which she has ever manifested, and am expressing her opinions and her wishes in thus publicly declaring my determination to vote, now, against the amendment offered by the Senator from Virginia, and to record my name with those who believe that amendment to be both unnecessary and inexpedient.

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